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SHANGHAI MUNICIPAL POLICE
C. I. D. REGISTRY
No. I. O. D. 62
Date 17. 2. 29

SHANGHAI MERCURY, SATURDAY, FEBRUARY 9, 1929.

SENTENCE ON "NICK" CHAR.

Court of [illegible] Disregards Defendant's Citizenship.

The case in which Mr. Char Wai-yuen, known as "Nick" Char, was sentenced by the Provisional Court for assaulting a Chinese on Pioneer Field in assuming a serious turn in view of the disregard of the Court of Appeal for Mr. Char's status as an American citizen.

Through the intervention of Consul-General R. S. Cunningham, Mr. Char's release from police custody was secured. Mr. Char is a Chinese born in Honolulu, and is a member of the American Bar. He was, therefore, not subject to the jurisdiction of the Provisional Court.

In spite of this fact, however, the Provisional Court of Appeal, with Judge Chang presiding, yesterday proceeded with the case in Mr. Char's absence. Defendant was fined $300 in the Court of First Instance, but this was changed to three months' imprisonment yesterday.

In connection with this case, it is understood that Messrs. H. E. Stevens and C. D. Meinhardt, American Vice-Consuls and the Senior Consul's Deputies, endeavoured to see Mr. Wunsz King, Commissioner of Foreign Affairs, on appointment, but upon arrival at the bureau were informed that the Commissioner was not in.

IV C.I.D. Reg. Please file and cross file under "Educationalists". 25:2:29.

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IL a/D.K.G. Information. 13/2/29

The Case of Mr. W. Y. Char

A MOST interesting case of the conflict of authority due to the existence of consular jurisdiction in China was recently brought to light by the detention of Mr. W. Y. Char for four nights in the local police cell. Mr. Char was born in Honolulu and therefore is considered to be an American citizen. He practised law in Shanghai for several years and therefore is supposed to know the procedures in the American court and the Chinese Provisional Court. Sometime ago he was fined $300 by the latter court on a charge of assault. He was not satisfied and appealed the case. The Court of Appeal took the case under advisement, and because the court had refused him bail for one reason or another he was detained in a cell in the Central Police Station. Then he realised the seriousness of the case, and his attorney appealed to the American Consulate for his release. On the morning when he was released from the cell upon the demand of the American Consular authorities, the Court of Appeal sat and in his absence sentenced him to three months' imprisonment. Though the sentence may not be enforced now that Mr. Char has asserted his American citizenship, he can no longer practice in the Provisional Court. We may have all the sympathy for Mr. Char as a popular member of the local community and as a man of high intellect and character but we cannot understand why he should have conducted himself as a Chinese citizen under Chinese jurisdiction and then finding things not to his liking claimed his American citizenship. As a lawyer Mr. Char ought to have known exactly what his nationality is. If he submitted to the Provisional Court in the first instance without even the slightest protest, he should have abided by the court's judgment. Even if the judgment as rendered was not just in his mind, why should he have appealed the case and having appealed why should he have asked for American protection? Supposing that the Court of Appeal had dismissed the case in favor of Mr. Char, would he have asserted his American citizenship? If the American Consular authorities wanted to claim Mr. Char as an American citizen, why did they not claim him when he appeared in the Provisional Court in the presence of an American Vice-Consul? When a Chinese Court's decision is favorable, it is upheld by the foreigner; when it is not favorable, then the right of extraterritoriality is asserted. This is but another instance of the undesirability of consular jurisdiction and one more reason why it should be abolished.

THE CASE OF "NICK" CHAR

Fine of $300 Changed to Three Months Imprisonment by Court of Appeal Despite Mr. Char's Citizenship

LAWYER REMOVED FROM POLICE CUSTODY

Considerable interest is now being centred on the case of Char Wai-yuen ("Nick" Char), a Chinese who was born in Honolulu and who is a member of the American Bar, which has brought about international complications.

The detention of Mr. Char was the subject of a very strong statement in Court on Thursday by Mr. H. E. Stevens, the U. S. Vice-Consul and Senior Consul's Deputy, but, in spite of this, Mr. Char was yesterday afternoon sentenced to three months' imprisonment by the Provisional Court of Appeals. However, he was removed from the custody of the Municipal Police by the United States Consular authorities under instructions from Mr. E. S. Cunningham, the American Consul-General, who held that Mr. Char, being an American citizen, was not subject to the Provisional Court or any court other than the United States Court for China.

After Mr. Char had been removed from Central Police Station, Mr. Cunningham was questioned by a representative of this paper and he stated that the news was quite correct. Mr. Char, he said, was an American citizen and he would be protected by the American laws.

U. S. Consul-General's Attitude

Asked whether he would agree to allow Mr. Char to submit to the jurisdiction of the Provisional Court, Mr. Cunningham said, "Decidedly no." Mr. Char, he reiterated, could be sued in the U. S. Court for China if the Chinese complainant so wished.

The Chinese judges of the Provisional Court differ in opinion from Mr. Cunningham for they informed the "North-China Daily News" representative that, according to Chinese law, Mr. Char is a Chinese citizen. The fact that he was born in a foreign country did not affect his Chinese status and the judgment of the Court would have to be enforced. It was an unfortunate matter, but the law had to take its course.

Mr. Char was to have appeared before Judges Chung (presiding), Tsing and Chiu in the Provisional Court of Appeals yesterday afternoon but, owing to the fact that he had been removed from the custody of the police by the American Consular officials, he failed to put in an appearance, so the case was proceeded with in his absence, Judge Chung saying:—

This case was set for 2 p.m. and it is now 3 p.m. and accused is not here. According to article 325 of the code, judgment can be given in the absence of accused and the police can inform accused of the Court's judgment.

According to the facts of the case, the complainant has been seriously injured but, according to the law, he was not and consequently accused is sentenced for causing slight injury.

In the Court of First Instance, accused was fined $300. To a poor man this would be heavy punishment but, as accused is a rich man, this fine is no punishment so he is sentenced to imprisonment.

Complainant's friend said that complainant's injury may get worse later on, but Judge Chung said that the Court could not wait for that to happen.

The Court then rendered judg-

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THE CASE OF "NICK" CHAR

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ment as follows:—The original judgment is set aside. Accused is sentenced to three months' imprisonment for assault on complainant. Accused's appeal is dismissed. Each two days of his detention shall count as one in prison.

It appears, in connection with Mr. Char's release by the American authorities, that Mr. Cunningham wrote letters to the Commissioner of Foreign Affairs and to the President of the Provisional Court demanding Mr. Char's release. Mr. Cunningham, we understand, drew attention to article 11 of the treaty of 1858 between China and the United States which provided that American citizens charged with offences could only be brought before the American authorities and charged according to the laws of the United States.

Mr. Char Released

Failing to receive a satisfactory response and as Mr. Char was not released, Mr. Cunningham addressed a letter to Mr. S Fessenden, chairman of the Shanghai Municipal Council, which resulted in Mr. Char's release.

Prior to his release, however, Messrs. H. E. Stevens and C. D. Meinhardt, American Vice-Consuls and Senior Consul's Deputies, went to the Bureau of Foreign Affairs, on appointment, to see Mr. Wunsz King, the Commissioner. They were informed, however, that he was not in and, therefore, they did not see him.

AMERICAN CITIZEN'S STATUS

Defined by Deputy When Hawaiian Born Lawyer Appears Before Judge

A comprehensive statement was made by Mr. H. E. Stevens, U. S. Vice-Consul and Senior Consul's Deputy, in the Shanghai Provisional Court yesterday with reference to the status of Char Wai-yuen ("Nick Char"), a lawyer, who is associated with Mr. H. D. Rodger.

Mr. Char was charged with assaulting a Chinese on the Pioneer Field.

In Court yesterday, Mr. Rodger drew the attention of the Court (Judge Shen and Mr. Stevens) to the fact that Mr. Char was an American citizen, born in Honolulu, Territory of Hawaii, and therefore he was not subject to the jurisdiction of the Provisional Court or other Chinese court. Mr. Char, continued counsel, had been a member of the American Bar for the past six years, and Mr. Rodger had proof showing that he was born in Hawaii. This was shown on his Army discharge certificate, Mr. Char having served with the American Forces in France during the Great War. "Why he has surrendered himself to this Court does not matter," Mr. Rodger said, "He cannot be made to appear before this Court unless he has expatriated himself."

Not a Chinese Lawyer

Judge Shen—This case is pending in the Court of Appeals, so we cannot deal with it.

Mr. Rodger—That makes no difference. Mr. Char is not required to appear before this Court, nor should he have appeared before the Appeal Court. He is not a Chinese lawyer. He is an American lawyer. He has done nothing to make him lose his American citizenship, therefore the question of his citizenship can be raised in this Court at any time, no matter if the case is pending in the Court of Appeals or not.

Mr. R. T. Bryan (Prosecuting Solicitor who appeared for the Police) said that he would like the Court to note that, if the Municipal Council received a letter from the American Consul-General saying that Mr. Char was an American citizen, the Police would have no other alternative but to hand him over to the American Court but up to the present no such notification had been received.

Mr. Stevens—If Mr. W. Y. Char was born in the United States, and was subject to the jurisdiction thereof, he is a citizen of the United States, provided, he has not expatriated himself by becoming naturalized in any foreign state in conformity with the law of that state or by taking an oath of allegiance to any foreign state.

A Citizen's Rights and Privileges

The rights and privileges of a citizen of the United States, Mr. Stevens continued, cannot be denied or abridged on account of race or colour.

Under the treaties, citizens of the United States in China (the statement continued), who wound the persons of Chinese, shall be punished only by the Consul or other public functionary thereto authorized, according to the laws of the United States. But arrests in order to trial may be made by the Chinese.

If Mr. Char is an American citizen, Mr. Stevens continued, he may be detained in Chinese custody pending a requisition from the American Consul to have him handed over to the jurisdiction of the United States Court for China.

Mr. Rodger asked that the Deputy's statement be endorsed on the charge sheet (which was done), so that no other action could be taken against Mr. Char in the Provisional Court.

Judge Shen said that he agreed with what Mr. Stevens had said, but he failed to mark the Chinese charge sheet.

Mr. Bryan—I understand that the Police must hold Mr. Char until they receive information from the United States Consul-General saying that Mr. Char is an American citizen.

Judge Shen—That is so, Mr. Bryan.

This concluded the hearing.

Mr. Char, as he Anglicized his name, was born in Honolulu in 1898 of unnaturalized Chinese parents, attended university in that city, and was among the first to volunteer for service in France in 1917. At that time he was a freshman. Overseas he was engaged in three major conflicts, and after the Armistice, attended a university for one year. Upon returning to America he completed his law course in Creighton University, Omaha, Nebraska, received his bachelor-of law degree, and was admitted to the Nebraska Bar. It is understood that Mr. Char has registered at the American Consulate yearly for the past six years.

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information
Feb 8/29

THE SHANGHAI TIMES, THURSDAY, FEBRUARY 7, 1929.

W. Y. Char To Appear Before Provisional Court To-day

An appeal to the American Consular authorities in the case of Mr. W. Y. Char, local Chinese-American attorney, has been made by Mr. H. D. Rodger, who is representing Mr. Char. The latter spent his third consecutive night in a cell at the Central Police Station last night and this morning is to appear in the Provisional Court where the matter of his nationality will be brought up and efforts made by his legal representative to have him turned over to the American authorities.

Mr. Char, as was reported yesterday in this newspaper, was found guilty in the Provisional Court on a charge of assaulting a Chinese youth. He was fined $300 and appealed the case. The Court of Appeals has the case under advisement.

The attorney, it was learned yesterday, is a bona fide American citizen, although he is a Chinese. He was born in Honolulu. Under the laws of China, it was stated yesterday, he has a dual nationality and is both an American and a Chinese citizen. Just whether he is subject to the laws of both nations is problematical.

In submitting himself for trial in the Provisional Court Mr. Char is understood to have acted contrary to the warning of Mr. C. D. Meinhardt, American Vice-Consul and Senior Consul's Deputy at the Provisional Court. Because of his American citizenship the attorney is stated to have been advised to submit only to the jurisdiction of the American Court for China.

Mr. Meinhardt and Mr. Rodger yesterday visited the prisoner in his cell at the Central Station. Following their conference Mr. Meinhardt declined to discuss the case, stating that no decision has been reached in the matter and that the case is being considered by the proper authorities.

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Information

SHANGHAI ATTORNEY IS GAOLED

Judge Refuses To Allow Cash Bail For Mr. W. Y. Char

Owing to the refusal of a Chinese Judge of the Shanghai Court of Appeals to allow cash or shop bail, Mr. W. Y. Char, local attorney, spent last night in a cell at the Central Police Station. Mr. Char, who is familiarly known as "Nick" to his fellow lawyers, also spent Monday night in the same cell.

Mr. Char, who is stated to be an American-born Chinese and an American citizen, has many times appeared as a lawyer in the court of the very Judge who refused him liberty on bail. Mr. Char has also appeared innumerable times as an attorney in cases in the American Court for China, and in the Provisional Court. It was in the latter court that he was convicted sometime ago on a charge of assault. In his legal profession he is associated with Mr. H. D. Rodger, one of the leading members of the local American Bar.

The history of Mr. Char's case and subsequent imprisonment dates back to an afternoon of June 4, 1927. The attorney, who is known for his athletic prowess, repaired to Pioneer Field on that afternoon to engage in baseball practice. He was joined by three other men, all foreign-born Chinese.

Lost Baseball

At the same time about 15 young Chinese were playing football on the field. After practicing an hour or two Mr. Char and his compapions elected to go to the dressing room, leaving one of the quartette on the field to search for a lost baseball.

According to the evidence produced in the Provisional Court at the time of the trial, the fourth member of the party found that a Chinese youth had stolen the baseball, secreting it in a baseball glove. The youth is stated to have refused to surrender the ball, resulting in it being forcibly taken from him by Mr. Char's friend.

The youth is asserted to have been slapped by the elder man, following which the football players took a hand and are stated to have driven the baseball player from the field, using stones and fists in the process.

Fled From Field

The latter is reported to have fled to the dressing room of the field and reported the matter to Mr. Char and the others. Joined by Mr. Paul Kong, the five are reported to have returned to the field to demand an explanation from the football players.

The football players, it is claimed, addressed the five in Chinese, which was not understood, the five baseball players replying in English, stated not to have been understood by the football players.

An argument followed and resulted in a free-for-all fight.

In court Mr. Char testified that the football players were armed with at least two bamboo poles, and that during the struggle one of the pole-bearers swung at one of the baseball players, missed him and instead struck a young Chinese allied with the football players.

Sustained Severe Injuries

The Chinese youth sustained a fractured jaw and other injuries, necessitating immediate medical attention. The fight ended and the injured youth was hurried to the St. Maria Hospital by Mr. Char and Mr. Kong.

Two weeks later Mr. Char received a summons from the Provisional Court, ordering him to appear and answer to a charge of assault. The case was remanded from time to time and finally came to trial about three months ago, at which time Mr. Char was found guilty and fined $300.

He appealed the case through his attorneys, Messrs. D. S. Chen and S. C. Yang. The case came before the Court of Appeals on Monday, Judge Chung ordering that Mr. Char be remanded in custody and denying cash or shop bail.

Cash Bail Offered

Friends of the attorney offered to put up a cash bail of $10,000 but this is stated to have been refused by Judge Chung, who ordered that the convicted man be lodged in gaol. Mr. Char was taken to Central Police Station. Last night and on Monday night he slept in a cell housing a number of armed robbers and other criminals.

After receiving the court summons and prior to the time he was brought before the Court of Appeals, Mr. Char was at liberty on his own recognizance. He was convicted and fined in the Provisional Court by Judge Chau. Judgment in the case has not been handed down by the Court of Appeals.

Born In Honolulu

Mr. Char was born in Honolulu, where he practiced law before coming to this city, and is stated to be an American citizen. It was learned yesterday that the case has been called to the attention of the American authorities.

It is understood that the injured Chinese has not yet fully recovered. In court, it was testified by a foreign doctor that the injured man left the hospital before he should have done so and that had he remained two months he would have fully recovered from his injuries.

The contention of the complainant is that he was attacked and brutally beaten.